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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0158-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY YOUNG,

Defendant-Appellant.

Submitted October 31, 2017 – Decided January 19, 2018

Before Judges Sumners and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Gloucester County, Indictment
No. 12-04-0395.

Joseph E. Krakora, Public Defender, attorney
for appellant (William Welaj, Designated
Counsel, of counsel and on the brief).

Sean F. Dalton, Gloucester County Prosecutor,
attorney for respondent (Joseph H. Enos, Jr.,
Senior Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Anthony Young appeals from an order denying his
petition for post-conviction relief (PCR) without an evidentiary
hearing. We affirm because defendant's contention that appellate

counsel provided ineffective assistance was not raised before the PCR court.

A jury found defendant guilty of second-degree possession of a firearm without a permit and fourth-degree prevention or attempting to prevent a law enforcement officer from effecting an arrest. At sentencing, the trial judge found that aggravating factors three, six, and nine applied. N.J.S.A. 2C:44-1(a)(3) (the risk of re-offense); -1(a)(6) (the extent of prior criminal record and the seriousness of the current offense); and -1(a)(9) (the need for deterrence). Because the judge determined there were no mitigating factors, he found that the aggravating factors substantially outweighed the mitigating factors. The judge found defendant qualified for an extended term as a persistent offender, making him eligible for a sentence ranging from five to twenty years. Yet, he imposed an aggregate prison term of ten years with five years of parole ineligibility, which was the maximum term for his second-degree offense.

We affirmed the conviction, and our Supreme Court denied certification. State v. Young, No. A-4533-12, (App. Div. December 23, 2014), certif. denied, 221 N.J. 492 (2015). There was no direct appeal of the sentence.

Defendant filed for PCR making numerous claims of ineffective assistance of counsel. The PCR judge rendered a forty-seven page written decision setting forth his reasons denying the claims.

In this appeal, defendant limits his challenge to the following arguments:

POINT I

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST[-]CONVICTION RELIEF SINCE HE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION FROM APPELLATE COUNSEL.

POINT II

THE TRIAL COURT ERRED IN REJECTING DEFENDANT'S PETITION, IN PART, ON PROCEDURAL GROUNDS PURSUANT TO RULE 3:22-4.

Both of defendant's arguments rely upon his contention that appellate counsel was ineffective for not contending on direct appeal that the trial court failed to apply mitigating factors one, two, and eleven when defendant was sentenced. N.J.S.A. 2C:44-1(b)(1) (defendant's conduct neither caused nor threatened serious harm); -1(b)(2) (defendant did not contemplate his conduct would cause or threaten serious harm); -1(b)(11) (excessive hardship to defendant or his dependents if defendant is incarcerated).

Based upon our review of the record, defendant did not argue to the PCR court that appellate counsel provided such ineffective assistance. Defendant only argued that, despite evidence at

sentencing supporting the three mitigating factors, the judge failed to indicate why no mitigating factors were applied in considering his sentence. We therefore decline to consider defendant's claim that he was denied effective assistance of appellate counsel. State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)) (We do not "consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.").

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION